

STATE OF MICHIGAN
COURT OF APPEALS

GARRY M. BLUHM,

Plaintiff-Appellant,

v

PATRICK J. WALSTON and LAURA L.
WALSTON,

Defendants-Appellees.

UNPUBLISHED

May 29, 1998

No. 202135

Oakland Circuit Court

LC No. 96-521685 NO

Before: Neff, P.J., and O'Connell and Young, Jr., JJ.

PER CURIAM.

This is a personal injury case based on a theory of premises liability. Plaintiff appeals as of right from the trial court's order granting summary disposition to defendants in reliance on the volunteer doctrine. We reverse and remand for trial.

The facts of this case are strikingly similar to those of *Hawkins v Ryder Truck Rental, Inc.*, ___ Mich App ___, ___ NW2d ___ (Docket No. 199136, issued 3/6/98). At oral argument, counsel for plaintiff and defendants agreed that *Hawkins* controls this case and requires reversal of the order for summary disposition.

At the request of defendant Patrick Walston, plaintiff agreed to help Walston and others raise a wall in defendants' home. The wall, approximately thirty feet long and complete with paneling, siding and part of the roof, slipped during the effort to lift it into place, injuring plaintiff. Plaintiff sued, claiming status as an invitee and asserting liability for the alleged ordinary negligence of defendants. Defendants claimed that plaintiff was a volunteer and that their only duty to him was to refrain from willful or wanton acts that might injure him. The trial court agreed with defendants' position on the issue of duty and found that plaintiff's claims of ordinary negligence could not sustain his cause of action.

In *Hawkins*, this Court dealt with the precise issue raised here on facts that make it indistinguishable from this case. The Court held that under Michigan law the volunteer doctrine serves to limit liability only in the context of claims based on respondeat superior, where a master is not liable for the ordinary negligence of his servant who has injured a third person having the

status of a volunteer. *Id.*, slip op p 2, citing *Diefenbach v Great A & P Tea Co*, 280 Mich 507, 512-513; 273 NW2d 583 (1937). The Court refused to extend the reach of the volunteer doctrine to immunize negligent actors from their *own* tortious conduct.

We agree with the reasoning and result reached by the majority in *Hawkins* and on its authority reverse and remand this case for trial.¹ We do not retain jurisdiction.

/s/ Janet T. Neff

/s/ Peter D. O'Connell

¹ In determining that plaintiff was a volunteer, the trial court expressly rejected plaintiff's argument that he was an invitee. This was error. Because plaintiff was on defendant's premises for the purpose of performing a service beneficial to defendant, he is to be accorded the status of an invitee. *Hottmann v Hottmann*, 226 Mich App 171, 175; 572 NW2d 259, 261 (1997).